

**MEMORANDUM OF AGREEMENT
BETWEEN SANTA FE COUNTY AND
THE STATE OF NEW MEXICO
DEPARTMENT OF CULTURAL AFFAIRS
OFFICE OF ARCHAEOLOGICAL STUDIES**

This Memorandum of Agreement ("Agreement") is made and entered into by and between Santa Fe County ("County"), and the State of New Mexico, Department of Cultural Affairs ("DCA").

WHEREAS, the County is planning to construct a recycling and solid waste transfer station (the "Project") on Jacona Land Grant property located along NM 502 west of Pojoaque High School in Jacona, Santa Fe County, New Mexico; and

WHEREAS, the County will fund the planning and construction of the Project; and

WHEREAS, this development of the Project by the County is an "undertaking" subject to the New Mexico Cultural Properties Act, NMSA 1978, § 18-6-1 to -17, as amended, (the "Act"), and its implementing regulations, NMAC § 4.10.7, 4.10.8, 4.10.11, 4.10.12, 4.10.14, 4.10.15, 4.10.16, and 4.10.17 (the "Regulations"); and

WHEREAS, the Office of Archaeological Studies ("OAS") is a division of DCA and provides archaeological services, including archaeological survey, excavation, monitoring, testing, laboratory analysis, human burial excavation and analysis, collection curation, research, and report writing and production, to state, federal, tribal, political subdivisions of the state, municipal and private clients on a cost reimbursable basis; and

WHEREAS, the County wishes to enter this Agreement under which the County will compensate DCA in return for OAS's archaeological services for the Project as described in this Agreement; and

WHEREAS, this Agreement between the County and DCA is exempt from the Procurement Code, NMSA 1978, § 13-1-98 (A).

NOW THEREFORE IT IS MUTUALLY AGREED BETWEEN THE PARTIES as follows:

1. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to provide for DCA's provision of archaeological services for the County's construction of the Project and the County's obligations for an undertaking as required by the Act and its Regulations. These services include archaeological inventory prior to construction of the Project.

2. SERVICES TO BE PROVIDED BY OAS

- A) *Scoping, Regulatory Assessment, and Initial Cost Estimation*: OAS will review the County's descriptions of the Project, known archaeological context of the undertaking, and plans for consultation concerning compliance with archaeological Regulations. OAS will provide advice to County staff concerning the adequacy of County's consultation plans and the archaeological implications of the undertaking. Based on the state of pre-existing knowledge of nature of cultural resources in the vicinity of the undertaking and expected compliance requirements, OAS will provide County with estimates of the costs associated with archaeological work necessary for compliance with the Regulations.
- B) *Scheduling and Permitting*: OAS will propose a schedule for the archaeological work that will minimize the risk of delay in the County's development plans for the Project. OAS will submit the work schedule to County for review. OAS will prepare and submit inventory, excavation, burial, and mechanical equipment permit applications, as appropriate, for the Project. Permit applications will be submitted for review by the New Mexico Cultural Properties Review Committee or the New Mexico Historic Preservation Division according to the Project schedule, as needed.
- C) *Project Components*: OAS will conduct an archaeological inventory of the parcel identified for the Project; record any cultural resources encountered during the inventory and provide a descriptive report that summarizes the results of the inventory. OAS will provide recommendations as to the eligibility for National Register nomination of any cultural resources encountered.
- D) *Records*: OAS will maintain all financial and administrative records for at least three years following the Project's completion, and all records will be made accessible to County representatives upon request. OAS will be responsible for curating all substantive records, artifacts, and samples per permit stipulations. Fees for record and artifact curation will be provided to the County as part of the County's budget estimate.

3) THE COUNTY'S RESPONSIBILITIES

- A) *Management Oversight*: The County will provide overall management of the Project within which OAS's archaeological services are carried out pursuant to this Agreement.
- B) *Access*: The County will negotiate access and conditions of work with adjacent property owners for all activities within the project area. This includes negotiating work space, temporary material stockpiling, and access for OAS personnel, equipment, and vehicles.
- C) *Utilities*: The County will arrange for the location of all private utilities for the Project.
- D) *Heavy Equipment*: Unless explicitly identified as an OAS responsibility in the definition of project scope, any activity that requires the use of heavy equipment such as asphalt cutting, asphalt removal, backfill compaction, and resurfacing with base course or asphalt will be the responsibility of the County.

4) COMPENSATION

- A) OAS will provide the County with cost estimates for OAS's services for the Project including fees for record and artifact curation for the County's review and approval.

- B) OAS will not incur any expenses on behalf of the County in excess of these amounts without prior approval of the County. OAS reserves the right to substitute personnel and contractual service providers as long as substitutions do not increase total costs as approved by the County.
- C) The County shall reimburse OAS for the direct costs of services rendered, including personal services, travel, project-specific supplies and equipment, contractual services, and permit fees plus an overhead amount of 25% of direct costs. Personal services rates are identified in Attachment 1 attached hereto, and other direct costs are specified in the cost estimates.
- D) The OAS cost estimate for this Project is detailed in Attachment 1 with scope-of-work assumptions on which the cost estimate is based.
- E) The OAS shall invoice the County by the 30th day of each month for services rendered.
- F) Within 15 days of the County's receipt of a detailed, written invoice, the County shall issue a written certification of complete or partial acceptance or rejection of the contractual services for which payment is sought. OAS acknowledges and agrees that the County may not make any payment hereunder unless and until it has issued a written certification accepting the contractual services. Within 30 days of the issuance of a written certification accepting the contractual services, the County shall tender payment for accepted services.
- G) In the event the County fails to tender payment within 30 days of the written certification accepting the services, the County shall pay late payment charges of one and one-half percent (1.5%) per month, until the amount due is paid in full.
- H) In the event OAS breaches this Agreement, the County may, without penalty, withhold any payments due OAS for the purpose of set-off until such time as the County determines the exact amount of damages it suffered as a result of the breach. Payment under this Agreement shall not foreclose the right of the County to recover excessive or illegal payment.

5) TERM OF THIS AGREEMENT

The term of this Agreement shall be ninety (90) days commencing from the date of last signature by the parties. The parties may extend the term of this Agreement by an instrument in writing executed by the parties.

6) REPRESENTATION

OAS agrees that it will provide services that meet or surpass applicable standards for archaeological services as defined in the scope of work and permit stipulations issued by regulatory agencies. OAS will provide accurate and complete data collection, documentation, and interpretation, and represents that the scope of work will be fully executed but does not assure a particular outcome from the consultations. Any deficiencies arising from OAS' failure to satisfy the scope of work or permit stipulations will be corrected without additional compensation from the County. OAS is not liable for any damages resulting from delays in the historic preservation consultation process.

7) TORT CLAIMS ACT

Neither of the parties shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with

this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, §§ 41-4-1 to -30 (1976 as amended through 2013). This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law and the New Mexico Tort Claims Act. The parties, and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

8) TERMINATION

Either of the parties may terminate this Agreement by providing 30 day's notice to the other party. By such termination no party may nullify obligations already incurred prior to termination of the Agreement. Upon notice of termination, OAS shall bring all operations to a safe and stable condition, shall complete all primary records and documentation, and shall turn over all records and collections to the County.

9) NON-APPROPRIATION CLAUSE

Nothing in this Agreement shall be construed as obligating the County to provide the contributions herein if an appropriation is not made to support that obligation according to law, or to expend funds or to expend funds in the future in excess of appropriations allowed by law. This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Board of County Commissioners of Santa Fe County and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the County to OAS. Such termination shall be without penalty to the County, and the County shall have no duty to reimburse OAS for expenditures made in the performance of this Agreement. The County is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the County. The County's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by OAS in any way or forum, including a lawsuit.

10) COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A) In performing its obligations hereunder, OAS shall comply with all applicable laws, ordinances, and regulations.
- B) This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules.

11) AMENDMENTS OR MODIFICATIONS

This Agreement may be amended or modified only with the written consent from both parties.

12) BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of each party and their respective representatives, successors and assigns.

13) DISPUTE RESOLUTION

The parties agree to use any and all methods of dispute resolution to resolve any conflicts arising under this Agreement. Disputes shall be first discussed by representatives of each party having such the authority, if necessary, to bind the party that they represent. Such representatives shall use their best efforts to amicably and promptly resolve the dispute. If the parties are unable to resolve the dispute through informal mechanisms or mediation within 30 days of the occurrence of the event or circumstances giving rise to the dispute, either party may give notice to the other party that the dispute cannot be resolved. Either party may then pursue available legal remedies including litigation. Any litigation regarding the enforcement, effect, or interpretation of the Agreement shall be brought in the State of New Mexico, First Judicial District Court.

14) NOTICES

Any notice required by this Agreement shall be given in writing to the persons designated by the parties below. Notice shall be effective when delivered personally to either party, or three days after deposited, postage fully prepaid, registered or certified, in any official receptacle of the U.S. Postal Service.

For OAS:

Eric Blinman, Director
Office of Archaeological Studies
PO Box 2087
Santa Fe, NM 87504-2087

Center for New Mexico Archaeology
7 Old Cochiti Road
Santa Fe, NM 87507

Office: (505) 476-4404, cell phone: (505) 660-2809, eric.blinman@state.nm.us

For the County:

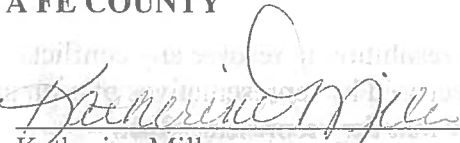
Joseph J. Martinez, Project Manager
Projects Division
Santa Fe County Public Works Department
901 West Alameda Suite 20-C
Santa Fe, New Mexico 87501

Office: 505-992-3014, cell phone: 505-470-1394, e-mail: jjmartinez@santafecountynm.gov

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date the late last signature below.

SANTA FE COUNTY

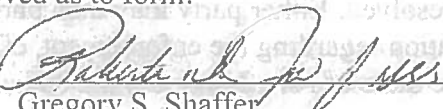
By:


Katherine Miller
County Manager

Date:

11-12-15

Approved as to form:


Gregory S. Shaffer
Santa Fe County Attorney

Date:

11-4-15

Finance Department:


Carole H. Jaramillo, Director
Santa Fe County Finance Department

Date:

11/10/15

STATE OF NEW MEXICO, DEPARTMENT OF CULTURAL AFFAIRS

By:


Veronica Gonzales, Cabinet Secretary

Date:

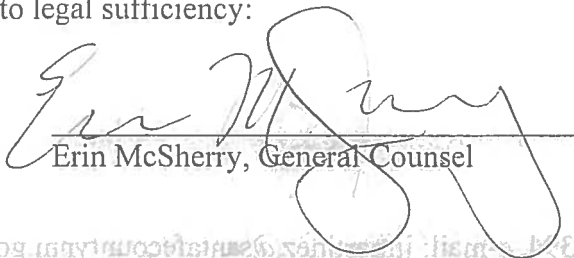
11-18-15


Eric Blinman, Office of Archaeological Studies

Date:

11/17/15

As to legal sufficiency:


Erin McSherry, General Counsel

Date:

11/17/15

As to budgetary sufficiency:



Greg Geisler, Chief Financial Officer/ASD Director

Date: 11-18-15



Office of Archaeological Studies

Museum of New Mexico ~ Preserving Our Heritage Since 1909

August 4, 2105

Joseph J. Martinez
Project Manager
Projects Division
Public Works Dept.
Santa Fe County, New Mexico

RE: Request for Qualifications for Jacona Collection Site, approximately 22 acre survey with likely survey of highway ROW required.

Dear Mr. Martinez :

Enclosed are two cost estimates for a cultural and historic resource survey in advance of construction of the Jacona Collection Center in Santa Fe County, NM.

Estimate 1 assumes the discovery of two archaeological sites and covers pedestrian survey, site recording, historic research and associated reporting. The second estimate (Estimate 2) provides a cost estimate assuming that no archaeological sites are found on the land parcel. Both estimates may vary based on the time required time for pedestrian survey, which is affected by terrain—so these should be treated as estimates not quotes.

Barring unexpected discoveries (more than 2 archaeological sites or unexpectedly high artifact densities), client incurred delays, or inaccurate representation of the survey parcel, Estimate 1 is a maximum estimate. Should the field work be completed more quickly and only a few – or no – cultural sites be encountered and few – or no – artifacts recorded, then the actual cost may be reduced.

OAS is a not-for-profit enterprise, which complicates our responses to RFQs in a competitive bidding environment. We cannot underbid a project, but instead must provide cost estimated based on a realistic assessment of the nature of the effort that will be required. Clients are billed only for the actual costs associated with a given scope of work, up to the amount of the estimate. If the scope of work changes (if site or artifact density exceeds that expected), then cost estimates will need to be renegotiated with Santa Fe County Public Works Department. No costs in excess of approved estimates will be incurred without approval of the client.

Office of Archaeological Studies is located in Santa Fe County and OAS is not liable for payment or collection of Gross Receipts Tax. The attached Archaeological Services Agreement General Conditions” pertains to this RFQ .

Costs to survey a 22 acre parcel of land as depicted in *siteplan_for archeol.pdf* will be between **\$10,093** and **\$20,421**. If you have any questions regarding the scope of work, assumptions and conditions, and cost estimate, please call Jessica Badner at (505) 476-4421; email: jessica.badner@state.nm.us.

Sincerely,

Jessica Badner Project Director

ATTACHMENT 1
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ESTIMATE #1: Office of Archaeological Studies --RFQ for 22 acre pedestrian survey with 2 archaeological sites for Jacona Collection Center. This budget assumes survey of the adjacent highway department right of way area . Discovery and recording of two archaeological sites based on adjacent surveys and recording. The budget includes required reporting time, graphics and editing.
Badner 6-16-2015, EB 8-4-15

Task Category	Task	Position	Rate	hours	days	Total
PRE-FIELD						
	Field Prep	Archaeologist / Crew	35.52	4	0.5	\$142.08
	Background	Project Director	45.67	8	1	\$365.36
	GIS	GIS Tech / Crew	42.16	12	1.5	\$505.92
	Review / Proj Dev	PI	56.87	8.5	1.0625	\$483.40
	SUBTOTAL				0	\$1,496.76
FIELD						
	Survey (walk)	Archaeologist / Crew	35.52	40	5	\$1,420.80
	Survey (walk)	Archaeologist / Crew	35.52	40	5	\$1,420.80
	Site Documentation	Project Director	45.67	16	2	\$730.72
	Site Documentation	Archaeologist / Crew	35.52	16	2	\$568.32
	Travel	Vehicle Use	28.00	7		\$196.00
		Mileage	0.25	60	7.5	\$15.00
	SUBTOTAL					\$4,351.64
POST-FIELD						
	GIS post processing	GIS Tech / Crew	26.98	16	2	\$431.68
	Site and project maps	GIS Tech / Crew	26.98	28	3.5	\$755.44
	NMCRIS site forms	Archaeologist / Crew	35.52	16	2	\$568.32
	NIAF	Archaeologist / Crew	35.52	8	1	\$284.16
	Loading site shapes to ARMS	GIS lead	42.16	4	0.5	\$168.64
	Reporting	Project Director	45.67	48	6	\$2,192.16
	Reporting	Project Director	35.52	40	5	\$1,420.80
	Review	PI	56.87	8	1	\$454.96
	Admin	Project Director	45.67	16	2	\$730.72
	Admin	Office Mgr.	34.58	4	0.5	\$138.32
	Admin	Financial	31.68	4	0.5	\$126.72
	Production	Graphics	45.67	32	4	\$1,461.44
	editor		39.44	36	4.5	\$1,419.84
	Printing		25.00	7		\$175.00
	Supplies		1.00	25		\$25.00
	Telephone		1.00	20		\$20.00
	Copies		1.00	15		\$15.00
	NMCRIS Fee					\$100.00
	SUBTOTAL					\$10,488.20
	TOTAL					\$16,336.60
	Overhead		0.25			\$4,084.15
GRAND TOTAL						\$20,420.74

OAS Standard Rates for Archaeological Services

OAS Rates for Archaeological Services -- 11/03/15

Staff member	Without overhead			With 25% overhead				
	Hourly wage	Full invoice cost per straight hour	Full invoice cost per overtime hour	Full invoice cost per straight hour	Full invoice cost per overtime hour		Full invoice cost per straight day	Full invoice cost per straight week
Akins, Nancy J.	23.666	38.64	38.64	48.31	48.31	8	386.44	1932.20
Arany, Lynne	24.414	42.01	54.21	52.51	67.77	8	420.07	2100.35
Badner, Jessica	20.504	42.38	42.38	52.98	52.98	8	423.80	2119.00
Blinman, Eric	32.233	57.66	57.66	72.08	72.08	8	576.64	2883.20
Boyer, Jeffrey	23.377	48.51	48.51	60.64	60.64	8	485.10	2425.51
Coan, Isaiah	14.682	29.16	36.50	36.45	45.62	8	291.56	1457.80
Cox, Jeffrey	17.833	34.86	43.78	43.58	54.72	8	348.63	1743.15
Etsitty, Lynette	15.568	28.61	36.40	35.77	45.49	8	286.12	1430.60
Foster, Vernon	15.438	27.95	35.67	34.94	44.58	8	279.48	1397.40
Funkhouser, Gary	22.000	42.29	42.29	52.86	52.86	8	422.90	2114.50
Goodman, Linda	22.085	36.22	36.22	45.28	45.28	8	362.22	1811.10
Hannaford, Charles	23.940	46.39	46.39	57.98	57.98	8	463.86	2319.30
Jaquith, Scott	20.629	36.78	47.10	45.98	58.87	8	367.84	1839.20
Martinez, Melissa	20.940	41.73	52.20	52.16	65.25	8	417.28	2086.40
McBride, Pamela	21.539	48.34	48.34	60.43	60.43	8	483.40	2417.00
Moga, Susan	17.833	32.24	41.15	40.30	51.44	8	322.38	1611.90
Montoya, Richard	17.833	35.50	44.42	44.38	55.52	8	355.03	1775.15
Moore, James	23.280	44.30	44.30	55.37	55.37	8	442.99	2214.95
Powell, Judi	19.826	35.03	44.95	43.79	56.18	8	350.33	1751.65
Stodder, Ann	22.887	42.15	42.15	52.69	52.69	8	421.51	2107.55
Toll, H. Wolcott	23.938	53.96	53.96	67.45	67.45	8	539.58	2697.90
Toll, Mary	22.343	36.22	36.22	45.28	45.28	8	362.22	1811.10
Turner, Robert	23.896	46.38	46.38	57.98	57.98	8	463.83	2319.15
Weahkee, Mary	15.344	28.64	36.31	35.80	45.39	8	286.37	1431.85
Wening, Karen	17.009	35.17	43.68	43.97	54.60	8	351.73	1758.64
Wilson, C. Dean	22.936	40.06	40.06	50.07	50.07	8	400.55	2002.75
Yount, M. Kathleen	17.740	32.12	40.99	40.15	51.24	8	321.19	1605.95

Other standard rates

Vehicle day use	25.00	31.25
Vehicle mileage cost	0.25	0.31
Per diem (overnight)	85.00	106.25
Per diem (partial 2-6 hours)	12.00	15.00
Per diem (partial 6-12 hours)	20.00	25.00
Per diem (partial >12 hours)	30.00	37.50

ATTACHMENT 1
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